

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

KELVIN HENRY,

Plaintiff,

vs.

NEIGHBORHOOD HOUSING
PARTNERSHIP OF GREATER
SPRINGFIELD, et al.,

Defendants.

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Case No. 3:04cv377

JUDGE WALTER HERBERT RICE

DECISION AND ENTRY SUSTAINING MOTIONS TO DISMISS FOR
FAILURE TO PROSECUTE OF DEFENDANTS NEIGHBORHOOD
HOUSING PARTNERSHIP OF GREATER SPRINGFIELD, ITS
DIRECTORS AND EXECUTIVE AND FRED BLAIR (DOC. #21) AND
CITY OF SPRINGFIELD (DOC. #22); CAPTIONED CAUSE ORDERED
DISMISSED, WITHOUT PREJUDICE, FOR FAILURE TO PROSECUTE;
DISMISSAL BECOMES WITH PREJUDICE, UPON PASSAGE OF
CERTAIN PERIOD OF TIME; TERMINATION ENTRY

The captioned cause was filed October 27, 2004. On May 3, 2005, a Motion for Judgment on the Pleadings was filed by the Defendant City of Springfield (Doc. #8). On March 13, 2006, this Court overruled said motion, granting leave to the Plaintiff to amend his Complaint within ten (10) business days of that date (Doc. #15). A preliminary pretrial/scheduling conference was held between the Court and counsel on May 8, 2006, and a Scheduling Order filed on

May 18, 2006, which, *inter alia*, set dates for initial disclosures, the disclosure of lay and expert witnesses, conclusion of discovery and the filing of dispositive motions, as well as a trial date of January 7, 2008.

Since that date, the Defendants have submitted their witness lists and, with regard to the Neighborhood Housing Partnership Defendants, their identification of rebuttal expert witnesses.

To date, the Plaintiff has not filed his Amended Complaint within the ten (10) business days ordered from March 13, 2006. Nor has the Plaintiff complied with any of the deadlines established in this Court's Scheduling Order of May 18, 2006, to wit: he has never served upon Defendants his initial disclosures, due June 15, 2006; never tendered a settlement demand, due July 17, 2006; and never identified lay witnesses, which were due to be disclosed on December 1, 2006.

On March 2, 2007, both the Neighborhood Housing Partnership of Greater Springfield Defendants and the City of Springfield, filed Motions to Dismiss based upon the Plaintiff's failure to prosecute, pursuant to Fed. R. Civ. P. 41(b) (Docs. #21 and #22, respectively). The Plaintiff responded only to the motion of the City of Springfield (Doc. #23), indicating that he was hospitalized and needed an enlargement of time to respond. While the Court, regrettably, did not rule upon Plaintiff's motion for an extension of time, same was granted, in practical effect, by the fact that the Court took no action on the outstanding Motions to Dismiss by

all Defendants, in spite of the City of Springfield's Memorandum in Opposition to Plaintiff's Motion for Enlargement of Time (Doc. #24, filed March 28, 2007) and the Neighborhood Housing Partnership of Greater Springfield's Notice to the Court of Plaintiff's failure to respond to its Motion to Dismiss for Failure to Prosecute (Doc. #25), filed March 29, 2007.

Today is September 25, 2007, more than six months following the date on which a response was due to the Defendants' Motions to Dismiss. While this Court understands and empathizes with the health situation involving Plaintiff's counsel, it has heard nothing from him since his Motion for Enlargement of Time to respond to one of the two motions to dismiss for want of prosecution. As earlier indicated, no Amended Complaint has been filed by Plaintiff, within the ten (10) calendar days from March 13, 2006. The Court, accordingly, believes that the continued failure to prosecute this litigation, or even to advise the Court as to the status from Plaintiff's perspective, leaves this Court no alternative. Accordingly, the captioned cause is ordered dismissed, without prejudice, for want of prosecution. The dismissal is without prejudice. Should there be any reason, unknown or uncommunicated to this Court, as to why this dismissal for want of prosecution was ill advised, the Court must be advised within ten (10) calendar days from date. Failure of the Court to be so notified, will result in this dismissal being with prejudice.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

/s/ Walter Herbert Rice

September 25, 2007

WALTER HERBERT RICE
UNITED STATES DISTRICT JUDGE

Copies to:

James R. Greene, III, Esq.
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W. McGregor Dixon, Jr., Esq.

WHR:slc